

January 28, 2019

Robert G. Nelson, Superintendent  
Office of the Superintendent  
Fresno Unified School District

***Sent Via Email To: [bob.nelson@fresnounified.org](mailto:bob.nelson@fresnounified.org); Facsimile To: 559-457-3786***

**RE: Cease and Desist Letter to FUSD**

Dear Mr. Nelson:

I write on behalf of an interested citizen (parent of a student at Bullard High School), with regard to certain Brown Act violations apparently committed by Fresno Unified School District described below. This letter constitutes a cease and desist letter under Government Code section 54960.2.

On January 16, 2019, FUSD Superintendent Bob Nelson sent a letter to FUSD board member Terry Slatik stating his intention to discuss with the FUSD board at its regular meeting that night a number of issues relating to Mr. Slatik's conduct as a new member of the FUSD board. One of these issues was an incident in which Mr. Slatik was involved in a physical altercation with an FUSD student on the Bullard High School campus on January 11, 2019, which had at the time of Nelson's January 16 letter and after received extensive coverage in the local news.

Nowhere on the FUSD board agenda for January 16, 2019, were the facts and circumstances of the January 11 incident involving Mr. Slatik at Bullard High identified. To the extent that the board was discussing the matter in closed session under the description "Conference with Legal Counsel - Pending/Threatened Litigation (Government Code Section 54956.9(d)(2))," which did appear on the agenda, the district is obligated by the Brown Act to identify the existing facts and circumstances that constitute the basis for anticipated litigation, unless FUSD believes that the facts and circumstances are unknown to a potential plaintiff (54956.9(d)(1)), which is the only circumstance in which they need not be disclosed.

It strains credulity that the district would take the position that a potential plaintiff was unaware that he was the victim of an apparent physical assault, and that the assailant is a member of the FUSD board, when (1) the most likely potential plaintiff was present when he was apparently assaulted, and (2) the fact that his apparent assailant is an FUSD board member had been extensively covered by multiple local news outlets, which included video surveillance footage of the incident and a statement from Mr. Slatik himself on the incident.

The public is entitled to notice on a published agenda describing what the board will discuss in closed session, subject to narrow exceptions not applicable here. The incident of January 11,

which we know from Superintendent Nelson's letter was discussed by the board in closed session, should have been limited to a conference with the district's legal counsel (nowhere mentioned in Superintendent Nelson's letter to Mr. Slatic regarding the planned discussion in closed session), and appropriately identified on the agenda.

The majority of Mr. Nelson's letter discusses matters unrelated to the January 11 incident that he intended to discuss with the board in closed session that night, none of which could fairly be described as "anticipated litigation" as defined by the Brown Act. These matters were not otherwise identified anywhere on the agenda. The matters generally relate to Mr. Slatic's conduct as a new FUSD trustee and his conception of the role of trustees in district oversight and management. These are core, critical issues about district governance, and not within any of the narrow exceptions to the open meeting requirements of the Brown Act. The public was entitled to notice of that board discussion on a published agenda, and to witness the discussion occur in open session. FUSD violated the Brown Act by conducting the discussion without notice on a published agenda and in closed session.

"Conference with legal counsel" is not a magical incantation that allows the district to discuss whatever embarrassing incidents or problems it chooses in closed session. The Brown Act's requirements for published agendas and open meetings are broad, and the exceptions to them are specific and narrowly-interpreted by courts. Closed sessions for anticipated litigation are limited to specific facts and circumstances which generally must be identified on the agenda. It is also limited to a conference with legal counsel--not a wide-ranging discussion between Superintendent and board on critical issues of governance and oversight that the public has a right to see and hear.

I note also that the district's published agenda for the upcoming January 30 contains unspecified closed session items for conferences with legal counsel for anticipated litigation, and to the extent those items are intended to cover the incident of Mr. Slatic at Bullard High on January 11, it should be so specified on the agenda. To the extent they are intended to cover a more general discussion of Mr. Slatic's conduct and governance philosophy as an elected trustee, they should be removed from closed session and adequately described on the agenda.

My client's demands are as follows:

1. Place on a future board meeting agenda for open session this cease and desist letter and the district's response to it, within the statutorily-prescribed time limits of Government Code section 54960.2 for settlement of this matter.
2. If FUSD actually did not discuss in closed session on January 16 the matters that Superintendent Nelson stated in his letter to Mr. Slatic that he intended to cover, please confirm that in a written response to this letter and in a statement on the record at the district's board meeting, and further state that such discussion would have been in violation of the Brown Act.



3. If the district board and administration at the meeting of January 16 did in fact discuss in closed session the incident involving Mr. Slatic and a student at Bullard High on January 11, please so confirm in a written response to this letter and in a statement on the record at the district's board meeting. Further, in that writing and at the meeting:

- a. Admit that the agenda description for that item should have identified the facts and circumstances of the incident on the agenda with a description to the effect of "Incident between Trustee Slatic and student at Bullard High School on January 11."
- b. State the district's intention and commitment to identify those facts and circumstances on future agendas whenever it intends to discuss the matter.
- c. Confirm the district's understanding that the closed session exception for anticipated litigation is limited to conferences with legal counsel, and does not extend to matters unrelated to the facts and circumstances of the anticipated litigation.

4. If the district board and administration at the meeting of January 16 did in fact discuss in closed session the balance of the trusteeship issues relating to Mr. Slatic identified by Superintendent Nelson in his letter of that same day, please so confirm in a written response to this letter and in a statement on the record at the district's board meeting. Further, in that writing and at the meeting:

- a. Admit that discussion of governance issues related to Mr. Slatic was not on the agenda for the January 16 board meeting and discussion of them was therefore a violation of the Brown Act.
- b. Admit that discussion of the governance issues related to Mr. Slatic is not within any closed session exception the open meeting requirement of the Brown Act.
- c. Commit to appropriately identify this or similar matters on future agendas, to be held in open session.
- d. Produce any notes, recordings, or other documentation of the unauthorized closed session discussion of January 16, and describe the substance of the closed session to the extent not documented.

5. To the extent the board intends to discuss either the incident of January 11 or general issues of Mr. Slatic's conduct and philosophy as a trustee at its January 30 meeting, amend the agenda to conform to the Brown Act as described in this letter, or withdraw the items if the amendment cannot be timely made.

The public is entitled to know what the FUSD board is discussing in closed session, subject to very narrow exceptions not relevant here. Moreover, the public is entitled to advance notice and the ability to witness in open session the discussion of the critically important board governance issues identified by Superintendent Nelson in his letter to Mr. Slatic of January 16.

If the above demands are met, I would recommend that my client deem the Brown Act matter resolved. Otherwise, I will proceed to seek enforcement of the Brown Act by litigation as provided in Government Code section 54960.2.

I have copied the editor and the education reporter of the Fresno Bee, and the Senior Editor for GV Wire because I presume that they share this same interest in open and accountable government by our school board.

Truly,

Roger Bonakdar

RSB:ah

Cc: Joe Kieta (via email to [jkieta@fresnobee.com](mailto:jkieta@fresnobee.com)); Aleks Appleton (via email to [aappleton@fresnobee.com](mailto:aappleton@fresnobee.com)); and David Taub (via email to [dtaub@gvwire.com](mailto:dtaub@gvwire.com))